

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1201 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHASHIKANT MOHANLAL THAKKER

Versus

SURYAPRASAD HARIKRISHNA RAVAL

Appearance:

MR SURESH M SHAH for Petitioner
MR DU SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2000

ORAL JUDGEMENT

#. Present Revision Application has been filed by the defendant-tenant challenging the decree for possession passed by the Trial Court and confirmed in Appeal by the Appellate Court.

#. The facts leading to the present revision application are as under

That the respondent herein is the original plaintiff. He moved the court by way of Civil Suit No. 694 of 1979 in the Court of Small Causes, at Rajkot. The respondent plaintiff had filed the said suit for getting possession of the suit premises on the ground of non payment of rent. It is further the case of the land lord in the said suit that he is the owner of the house known as "Matruchhaya" situated in Gopalnagar Street No.1, Rajkot city. Out of the said property, one room, verandha, kitchen, a drawing room, bathroom, lavatory block and a covered fali was let out to the defendant tenant at a monthly rent of Rs.200/- That the electricity bill was to be paid by the tenant himself. According to the landlord the defendant-tenant failed and neglected to pay the rent and he was in arrears of rent from 15.6.1976 to 14.12.1978. In the circumstances the plaintiff served a notice of demand to the defendant tenant asking him to pay the arrears of rent. Said notice was served by way of Registered Post AD but the defendant refused to accept the same. Ultimately the landlord filed the aforesaid suit for getting possession of the suit property on the ground of arrears of rent. In the plaint the landlord had asked the arrears of rent at the rate of Rs. 200/-. There was no demand of any taxes by the landlord in the plaint nor was it demanded in the suit notice.

#. The defendant resisted the suit by filing written statement exh.18. The defendant raised a dispute of standard rent in the written statement. It was also averred in the written statement that he sent the amount of rent by MO but the plaintiff has not accepted the same. Defendant also stated in his written statement that he had not received the suit notice. It was prayed that the standard rent should be fixed at Rs.50/- per month.

#. It was also stated that he has filed Misc. Civil Application No. 322 of 1979 in the court for determination of standard rent. Thus the suit was resisted by the defendant on all the aforesaid grounds.

#. The Trial Court framed necessary issues at exh.15. The Trial Court came to the conclusion that the tenant had not raised any dispute of standard rent within one of the receipt of the notice and therefore, the case would fall under section 12(3)(a) of the Bombay Rent Act. So far as the say of the tenant that he sent two cheques at

exhs 34 and 35 is concerned, it was found that both the cheques were dishonoured as on the relevant date the defendant had no money in his bank account. The tenant had stated in his evidence that the rent of Rs.200/- was inclusive of all taxes from the very beginning. Ultimately on appreciation of the evidence it was found by the Trial Court that the tenant was in arrears of rent from 15.6.1976. The Trial Court also found that Rs. 200/- per month inclusive of all taxes is the standard rent of the suit premises. Ultimately on the aforesaid ground of arrears of rent, the suit of the landlord was decreed by the Trial Court. The Trial Court came to the conclusion that the standard rent dispute was not taken within one month from the receipt of the suit notice. The Trial Court also came to the conclusion that even though the notice was served on the defendant by RPAD, he refused to accept the same. However, the application for fixation of standard rent was dismissed for default. So far as the question of standard rent is concerned, while deciding point no.1 it was found by the learned Appellate Judge that though the defendant has stated that he has filed the standard rent application, no documentary evidence has been produced on record to show that he had filed any such standard rent application.

#. The learned Appellate Judge however came to the conclusion that since the rent was inclusive of all taxes the case would fall under section 12(3)(b) of the Rent Act as tax cannot be said to be payable by month. The learned Appellate Judge has relied upon the judgment reported in 1980 Bombay Rent Cases 175 as well as the judgment reported in AIR 1970 (Gujarat) 68. The learned Appellate Judge however found that the tenant had not deposited the entire amount due during the pendency of the proceedings. He has also found that even the interim standard rent which was fixed was also not paid by him. It was therefore found by the learned Appellate Judge in para 22 of his judgment that the tenant had not regularly paid the rent and therefore, was not entitled to protection under section 12(3)(b) of the Rent Act. The appeal was accordingly dismissed. Present revision application is filed by the petitioner tenant against the aforesaid judgment and decree passed by the learned Appellate Judge by which the decree for possession was confirmed.

#. Mr. S.M.Shah learned advocate for the petitioner submitted that the tenant had given an application for fixation of interim rent and the court fixed the interim standard rent at Rs. 125/- p.m.

#. Mr. S.M.Shah learned advocate for the petitioner argued that as per the judgment of this court in 1998(2) GLH 556(606), if the case falls under section 12(3)(a) of the Bombay Rent Act, the decree cannot be passed under section 12(3)(b) of the Bombay Rent Act. He therefore, argued that the judgment and decree of the learned Appellate Judge is erroneous and therefore, said judgment and decree deserves to be set aside.

#. As against that Mr. D.U.Shah learned advocate for the respondent has argued that the instant case clearly falls under section 12(3)(a) of the Bombay Rent Act and therefore, there was no question of decreeing the suit under section 12(3)(b) of the Rent Act. According to Mr. D.U.Shah the amount of Rs. 200/- is inclusive of all taxes and even the tenant has also stated in his deposition that Rs. 200/- is inclusive of taxes. In that view of the matter the case would fall under section 12(3)(a) of the Act because no part of the rent is payable by year and the landlord is charging only fixed amount of Rs.200/-. It is also required to be noted that neither in the suit notice nor even in the plaint the landlord has demanded any amount of tax separately. In fact the fixed amount of Rs. 200/- is demanded both in the suit notice as well as in the plaint though of course there is reference in the suit notice that the tenant has to pay electricity charges. But there is nothing on record to show that any such amount was claimed by the landlord from the tenant. However relying upon the judgment reported in 1980 Bombay Law Reporter 175 the learned Appellate Judge had come to the conclusion that since the amount of Rs. 200/- was the contractual rent inclusive of house tax and other taxes the case would fall under section 12(3)(b) of the Act as the rent is inclusive of all taxes. Mr. D.U. Shah has also relied upon the decision of the Supreme Court reported in 1991(1)(SCC) 570. The Honourable Supreme Court has considered the provisions of sections 12(3)(a) and 12(3)(b) of the Bombay Rent Act and ultimately laid down that if, by agreement the amount of tax is quantified and is payable monthly by the tenant, notwithstanding the owner's liability to pay the same annually to the local authority, the case would fall under section 12(3)(a) of the Bombay Rent Act. Trial Court had accordingly found that the case falls under section 12(3)(a) of the Bombay Rent Act. Considering the aforesaid proposition of law, the learned Appellate Judge was not right in coming to the conclusion that the case would fall under section 12(3)(b) of the Bombay Rent Act as in the instant case

the land lord was charging fixed amount of Rs. 200/- which includes all taxes. I therefore, agree with Mr. Shah that the instant case would fall under section 12(3)(a) of the Act and not under section 12(3)(b) of the Act.

##. The court can very well pass a decree under section 12(3)(a) of the Act and the present case would clearly fall under section 12(3)(a) of the Act. So far as the question of electricity charges are concerned, Mr. D.U.Shah has pointed out that the same is required to be paid every month. In view of this there is no substance in this revision application and the same is required to be dismissed.

##. At this stage it is also necessary to refer to the judgment of the Supreme Court reported in 31(1) GLR 209. It has been clearly stated by the Supreme Court that the tenant has to raise the dispute of standard rent within a period of one month from the receipt of the suit notice. In the instant case the tenant has not raised any dispute of standard rent within one months of the receipt of the suit notice and the said dispute was raised for the first time in the written statement. In view of the settled position of law, taking up the dispute of standard for the first time in the written statement cannot take the case under section 12(3)(b) of the Bombay Rent Act. I therefore, do not agree with the submission of the learned advocate for the petitioner that the case would fall under section 12(3)(b) of the Act.

##. Mr. S.M.Shah learned advocate for the defendant stated that the defendant had not received the suit notice as he was out of station and therefore, according to him no reply was given to the landlord. The learned Appellate Judge has also discussed the aforesaid point in paras 16 to 20 of his judgment. The learned Appellate Judge was of the opinion that if the tenant was out of station on tour, he could have produced some evidence to that effect. He has not led any evidence to substantiate his say that he was out of station and therefore, he had not received any such notice. If the landlord had sent notice to the tenant and if the same was not received by the tenant he ought to have led some evidence to establish the fact that he has not received such a notice. Aforesaid fact is clearly in the realm of appreciation of evidence and it is not possible for this court to come to a different conclusion than the one arrived at by the courts below. Mr. Shah has relied upon the decision of this court reported in 1984 GLH 110. The learned Judge of this court has found that judgment

that even though the landlord examines the postman, the postman cannot have any computerised memory and that therefore the evidence on record was not sufficient to come to the conclusion that the tenant had received the suit notice.

##. The learned single Judge has also considered the evidence on record of that case in para 15 of the judgment and it was found that the courts below had not properly considered the evidence of the tenant nor his explanation properly. However, in the instant case as stated above the learned Appellate Judge has given detailed finding that the say of the defendant was not found to be trust worthy and it was also found that the defendant has failed to discharge the presumption about non receipt of the suit notice. I find that the reasoning of the learned Appellate Judge is quite legal and proper and the same cannot be disturbed by me in exercising revisional power.

##. It was then argued by Mr.Shah that there was no specific demand in the suit notice and that demand should be positive . I have gone through the suit notice in which there is a specific demand of rent. In para 3 and 5 of the notice the landlord has clearly stated that the tenant should pay the arrears of rent and handover the possession of the suit premises. In the circumstances it cannot be said there was no specific demand of rent in the suit notice or that the suit notice of demand is not in conformity with the provisions of 12(2) of the Rent Act. The aforesaid notice is in conformity with the provisions of the Act. These are the only arguments advanced by Mr. Shah. I do not find any merit or substance in any of these arguments and accordingly they are rejected.

##. In the circumstances, I do not find any substance in this revision application and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

##. At this stage the learned advocate for the petitioner has requested the court to grant sometime to the petitioner for vacating the suit premises and to find out suitable alternative accommodation. In the circumstances the decree for possession may not be executed till 1.3.2002 on condition that the petitioner shall give a usual undertaking before this court within

six weeks from today. Copy of the undertaking may be given to the learned advocate for the respondent. In the undertaking the petitioner should mention that he will not part with the possession of the suit premises to anyone in any manner and that he will hand handover vacant and peaceful possession of the suit premises to the respondent landlord on or before the aforesaid date. In the meanwhile the plaintiff will go on paying the mesne profit to the landlord at the rate of Rs. 200/p.m. If there is any breach of the said undertaking the respondent landlord is at liberty to execute the decree for possession forthwith.

(P.B.Majmudar.J)

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